IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.488 OF 2005

Babaji Kanhoji Danundkar ...Appellant
Vs.
Maharashtra Industrial Development Corpn. ...Respondent

Mr.Amber Joshi for the Appellant
Ms Deepa Chavan for the Respondent.

CORAM: A.S.OKA, J.
DATED: APRIL 28,2005.

P.C.:

1. Heard Counsel appearing for the parties. The Appeal is by unsuccessful Plaintiff. The Application made by the Appellant-Plaintiff for temporary injunction at Exh.5 has been rejected.

2. A suit is filed for declaration that the letter dated 2nd January 2004 issued by the Project Manager of the Respondent is illegal and void. The case of the Appellant is that the Respondent invited tenders for sale of four food Kiosks situated in the Millenium Business Park at T.T.C. Industrial area at village Mhape, Navi Mumbai, District Thane. The Appellant had submitted his bid for purchase of one of the four kiosks being kiosk No.4 admeasuring 527 sq.ft. The Appellant offered his bid for Rs.9,25,500/-. According to the case of the Appellant he being the highest bidder, the Respondent accepted the bid. According to the Appellant subsequently the Respondent came out with a case that the area of the food kiosk is 327 sq.ft. and not 527 sq.ft. The Appellant insisted for sale of the said food kiosk

admeasuring 327 sq.ft. and offered to pay Rs.7,12,500/- as bid amount after considering the reduction of area of the said food kiosk. The said request was turned down by a letter dated 2nd January 2004 and the Respondent forfeited the deposit amount paid by the Appellant. The Application for temporary injunction was made praying for restraining the Respondent from allotting the food kiosk and for restraining the Respondent from handing over the possession of the said food kiosk to any third party. The learned Trial Judge rejected the application by holding that prima facie case is not made out and by granting injunction, public property will be kept vacant thereby causing loss to the Respondent-Corporation.

3. The learned Counsel for the Appellant submitted that the said Kiosk having area of 327 sq.ft. is again put to auction and highest bid is for Rs.7,36,000/- in the said fresh tender. He submitted that he is prepared to match the said bid. He submitted that the bid submitted by the Appellant was in terms of tender which provides that the area of kiosk was 527 sq.ft. He pointed out that considering the reduction in the area of the Kiosk, the appellant offered to pay a sum of Rs.,7,12,500/-. He submitted that a case for grant of injunction was made out. The learned Counsel for the Respondent supported the impugned Judgment and order.

4. I have considered the rival submissions. It is pertinent

to note that the Appellant submitted letter dated 17th July 2001 to the Respondent in which he has stated that he will not be in a position to pay the bid amount offered by him due to financial difficulties and therefore his tender should be cancelled and the sum of Rs.25,000/- be returned. It is to be noted here that the said letter is not referred to by the Appellant in his plaint. It is tried to be submitted by the Counsel that the letter was not acted upon and was withdrawn by the Appellant by his subsequent letter dated 27th October 2001. It is pertinent to note that no case is made out in the plaint that the said letter was not acted upon. In a letter dated 18th January 2002 the Respondent brought to the notice of the Appellant that he had demanded refund of deposit amount of Rs.25,000/-. The Appellant was called upon to express willingness by the said letter in case he was interested in the tender. Thereafter, there was a prolonged correspondence between the parties. In the meanwhile, fresh tenders were invited. Fresh tenders could not be opened because of the ad-interim order passed by the Trial Court. It is pertinent to note that the Appellant has not participated in the fresh tender process.

5. Considering the conduct of the Appellant of submitting letter dated 17th July 2001 and the delay in filing the suit the learned Judge has denied the equitable and discretionary relief of temporary injunction. In my view, considering the facts and circumstances of the case, the learned Trial Judge was right in exercising the discretion against the Appellant.

6. A substantive suit filed by the Appellant is pending. It is therefore obvious that any further transaction made by the Respondent in respect of the food kiosk will be naturally subject to final outcome of the suit. The claim of the Appellant can be adequately protected by directing the Respondent that in case the said food kiosk is allotted by the Respondent to any third party, the Respondent will give notice of pendency of the suit in writing to the said third party.

7. Hence I pass the following order :

i) Appeal is dismissed with no order as to costs.

ii) All further transactions in respect of the said food kiosk will be subject to final result of the suit. In case the Respondent allots the said food kiosk to any third party, the Respondent will give notice of pendency of the suit to the said third party.

iii) All contentions of the parties on merits of the suit are expressly kept open.

iv) Parties and the concerned Court to act upon an authenticated copy of this order.

Judge.